

Liquor Control Board  
**Wine and Beer**  
**Three-Tier System Review**  
**Task Force**

May 18, 2006 - Meeting #2



# Welcome!



- **Introductions**

# Agenda



Topic	Purpose	Time	Outcome	Lead by
1. Welcome / Introductions / Agenda	Information	10 minutes (10:00-10:10)	Information	Nate Ford (Task Force Chair)
2. <b>Explain:</b> Voting process <i>and</i> <b>Summary:</b> Charter changes and charter adoption	Information Adopt Charter	15 minutes (10:10-10:25)	Information / Finalize Charter	Nate Ford
3. <b>Discussion</b> : Results of interviews and focus groups	Information	90 minutes (10:25-11:55)	Inform policy discussion and inform vote on change candidates	Sterling Associates
<b>BREAK - LUNCH</b>		35 minutes (11:55-12:30)		
4. <b>Discussion</b> : Continue discussion of state policy goals and strategies	Consideration of high- level criteria	75 minutes (12:30-1:45)	Agreement on high- level criteria as context for Task Force decisions	Sterling Associates
5. <b>BREAK</b>		15 minutes 1:45-2:00		
6. <b>Conclude:</b> policy direction	Information	30 minutes (2:00-2:30)	Information/ Understanding	Sterling Associates
7. <b>Wrap up:</b> and adjourn	Summary and assignments	15 minutes (2:30-2:45)	Information	Sterling Associates

# Voting Guidelines



- **The votes and majority/minority results will be determined from the actual number of votes indicated/received (abstentions will not be counted) with each Task Force member getting one (1) vote.**
- **Some voting may be conducted at the meeting while some may be conducted by ballot.**
  - Every Task Force member is expected to vote and to respond within the deadline indicated if vote is by ballot. This is necessary for Sterling Associates to compile results and/or to continue with the preparation/research needed for the subsequent meetings or for Task Force review and deliberation.
  - In the case of ballot votes, if a response is not received by the deadline indicated, it will be considered an abstention. (Exceptions may be made if it is determined there was a problem with email or Sterling Associates is contacted and agrees to an extension.)
  - If an individual item on the ballot is left blank, it will be assumed it was left blank on purpose and will be considered an abstention. (However, Sterling Associates reserves the right to follow-up with the voter to verify.)
- **The intent of these guidelines is not to force an inflexible process, but to assure the timeliness of information and mitigate the need/effort to follow-up and pester members from whom we don't receive responses.**

# Charter

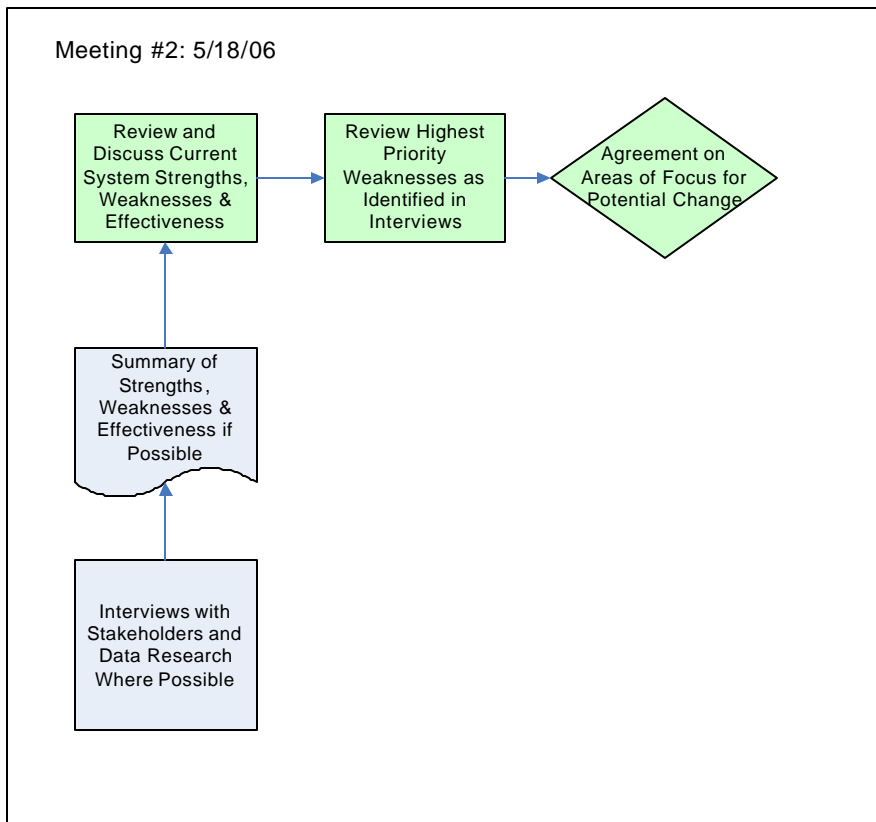


- Review Charter changes
- Vote to adopt

# Objective of Today's Meeting



- **Review and discuss feedback from interviews related to current system strengths and weaknesses, and continue policy discussion**



# Interview Results - General Themes



- **General Agreement**

- The state should regulate and enforce laws directly related to the misuse of alcohol and effective tax collection. All agree there should be strong enforcement of prohibitions on serving/selling to minors and over-serving/selling to inebriated individuals.
- There were no suggestions that the state should not control distribution through licensing.
- The state lacks sufficient resources to adequately enforce prohibitions on serving/selling to minors and over-serving/selling to inebriated individuals (and some added for trade practices too).
- Distributors offer a valuable, efficient service to producers, retailers and the state, and they would continue to be heavily utilized for distribution without mandatory use or other rules/practices that force their use.
- Current regulations are overly complex, hard to understand and prone to inconsistent interpretation. (wholesalers association are exception to this theme)

# Interview Results - General Themes



- **Major themes with some contrary opinions**

- The state should control misuse of alcohol and tax collection, but should not regulate business practices that are not directly tied to those two objectives. (Exceptions: wholesalers association, some treatment/prevention, minority of small producers/retailers.)
- The social, political and economic environment has changed substantially since the alcohol control laws were established. The regulations should reflect positive changes in education, attitudes and behaviors towards beer and wine, and should reflect the attitude of the legislature in supporting the Washington beer and wine industry. (Exceptions: treatment/prevention urges care in assuming permanent changes in attitudes and habits. Alcohol is still a controlled substance capable of creating harm to individuals and society.)



# Interview Results - General Themes



- **Contrasting themes**

- The system generally works. Use the current change mechanisms when needed. It is dangerous to change regulations without knowing how the interrelationships among the rules will be affected or how the changes might affect outcomes. (wholesalers association, minority of small retailers/producers, prevention/treatment)
- Most business advantages in the current system (perceived as “leveling the playing field”) are outweighed by the business constraints. The system needs to be dramatically changed, letting the market control the business aspects (that don’t contribute to misuse) rather than the state. (most large and small producers, most large and small retailers)

# Interview Results – Potential Items for Change



- **Items for potential change consideration**

1. Mandatory use of distributors and regulations that effectively force their use
2. Provisions in 2SSB 6823 (the legislation required the Task Force to assess the “impact” of the provisions)
  - a) Self-distribution
  - b) Controls for tracking for tax purposes
3. Advertising regulations
4. Money’s worth provisions / trade practices
5. Ownership interests related to producers and retailers
6. Anti-competition regulations (that could be handled instead through FTC)
7. Uniform pricing
8. Mandatory minimum 10% price mark-up
9. Price posting and hold
10. Retail to retail distribution
11. Quantity discounts
12. Foreign import distribution regulations

# Interview Results – Potential Items for Change



- **Items for potential change consideration (continued)**

13. Return of damaged goods
14. Sampling in grocery stores
15. Delivered pricing requirement for distributors
16. Rules for LCB retailing
17. Central warehousing
18. COD requirement for retailers
19. Criteria for regulations
20. Criteria for interpretation of regulations
21. Priority of enforcement resources
22. Enforcement resources (lack thereof)
23. Paperwork
24. Impact measures (lack thereof)
25. General regulation language and relevancy
26. Dual nature of LCB (enforcement/control and retail/promotion)
27. Role of LCB in supporting state economic development

# Interview Results - Discussion



- **Task Force member comments / questions?**

# BREAK



# Policy/Strategy

## Discussion-Last meeting



- **Is the state's policy goal to *foster temperance / promote moderation in consumption of alcohol* still appropriate/relevant?**
  - The general idea is valid, but the wording needs to change to “prevent the misuse of alcohol.”
    - “Misuse of alcohol” includes underage sales/drinking, driving while under the influence, serving to inebriated consumers, public inebriation, sales outside of the regulated system, or any other public use that could promote harm or create safety or nuisance issues.
  - In an attempt to prevent misuse the state should not affect responsible moderate consumption.
    - “Responsible moderate consumption” is the public sale/consumption of alcohol by legal adults, without misuse.
- **Is the state's policy goal to promote the efficient collection of taxes still appropriate/relevant?**
  - General consensus that it is appropriate for the state to pursue this goal.
- **Agree?**

# Continued Policy/Strategy Discussion



- Is the state's policy goal to assure *controlled, responsible and orderly marketing of alcohol* still appropriate/relevant?
  - There was not general consensus on this goal. There was discussion related to the definition of “orderly market” and many different opinions of what it means.
- The LCB requests a change in the wording presented for discussion to be consistent with statutory language:
  - Goal: *“to promote the public interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption.”* (RCW 66.28.180(1))
  - Working interpretation: *Avoidance of pressure on any one industry (producers, distributors, or retailers) from another that would cause collusion or result in unfair advantages or disadvantages that may result in over-consumption or increased access by minors.* [strike: Also includes consideration of a consistent market for consumers related to price and selection.]

# Policy Goal Discussion – Orderly Market



- **Feedback from Task Force members**

- LCB:

- Suggests orderly marketing does not have to be a policy goal separate from preventing misuse of alcohol; it may fall into the strategy category.

- Wholesalers Assoc:

- The legislature has created a definition of “orderly market” by inference, by adopting statutory provisions related to pricing. Taken together, these provisions create a system that assures relative price stability and uniformity, and wide availability of beer and wine.
    - Principal benefit of orderly marketing is concept of control...who is selling what to whom and at what price.

- Shelley Sieveking:

- Orderly market describes the social control necessary to prevent the risks of unregulated alcohol distribution – monitoring product location and relationships among handlers including provisions to prevent bootlegging, and product diversion.

- **Discussion.....**



# Policy Strategies – Separate the Tiers: State's Assumptions



- **Is the state's policy strategy to separate the three tiers still appropriate/relevant?**
  - State's working interpretation: Each tier serves different functions in the supply chain from production to consumer consumption. Restrictions in the business relationship between the tiers are important to support policy goals.
  - The LCB states that separating the tiers supports the goal of reducing/eliminating the misuse of alcohol by:
    - Limiting the supply of alcohol products – only licensed retailers can sell the products to consumers, and consumers can only buy from licensed retailers. (In contrast to a free market, that allows anyone to sell and there's no limitation on who can buy alcohol).
    - Ensuring the flow of product in commerce through licensed businesses (product content and reducing accessibility by minors or intoxicated persons). This is done by limiting who can sell to the public (must be a licensed retailer), and limits product accessibility by allowing consumer purchasing only from licensed retailers and from licensed liquor outlets (i.e, grocery/convenience stores, restaurants, etc).
    - Facilitating administrative inspection and examination of product by limiting the entry-point for products sold in WA to the distributor licensees located within the state. (note: Distributors are the entry-point for foreign & US produced beer/wine produced out-of-state).
  - Core assumption: manufacturer's profit motive to sell as much as it can of its products should be mitigated because of the harmful effects of alcohol consumption; the manufacturer must be separated from the consumer.

# Policy Strategies – Separate the Tiers: State's Assumptions



- According to the LCB, separating the tiers supports orderly and responsible marketing by:
  - including a middleman who can make independent decisions about product price and selection to sell to retailers. The historical assumption and danger arose from the “tied house” situation where the producer-brewer dictated the sale of its own brands and the price in saloons.
- And, separating the tiers supports efficient tax collection by:
  - Enabling tax collection from the smallest number of licensees, which has been the distributor tier. The distributor tier is the tier through which in-state and out-of-state (foreign & US produced) products are sold to retailers.
  - Collecting the taxes from an independent tier, where there is the least incentive to under-report product volume.
  - Making it easier for administrative verification, inspection and enforcement jurisdiction for premises located within the state (as opposed to out-of-state).
  - Core concept: Washington state has the power to tax products sold in the state.
- **DISCUSSION.....**

# Policy Strategies –Level Playing Field: State's Assumptions



- **Is the state's policy strategy to ensure a "level playing field" still appropriate / relevant?**
  - State's working definition/interpretation: To enable equitable competition among large, medium and small industries within and among the tiers, in order to avoid collusion and domination by a few (and undue influence) and to mitigate illegal sales. (Ensuring wide variety of product selection is NOT a state interest within the current LCB mission.)
  - The LCB states that ensuring a level playing field supports the goal of reducing/eliminating the misuse of alcohol by:
    - Preventing the dangers associated with a completely free market as it relates to alcohol. In a free market, large business can monopolize the market, which may result in:
      - Limited selection of products (because the monopolizing business would promote products of its choice)
      - Selling as much product as possible, which results in lower prices in order to increase availability & sales
      - Cheaper alcohol leads to increase in alcohol misuse (i.e, more over-consumption & more youth access)

# Policy Strategies –Level Playing Field: State's Assumptions



- **Level Playing Field (continued)**

- According to the LCB, ensuring a level playing field supports orderly and responsible marketing by:
  - Keeping alcohol from being used as a loss leader and preventing alcohol sellers from engaging in price wars. (Black's law dictionary definition of loss leader: "An item sold at very low price, and sometimes below cost, in order to attract people to a store with the hope that they will buy additional items on which a profit will be made.")
  - Ensuring uniform pricing to prevent wide disparity in business costs to participants.
  - Ensuring price stability to prevent wide fluctuations in prices or price wars that might result in the use of alcohol as a loss leader.

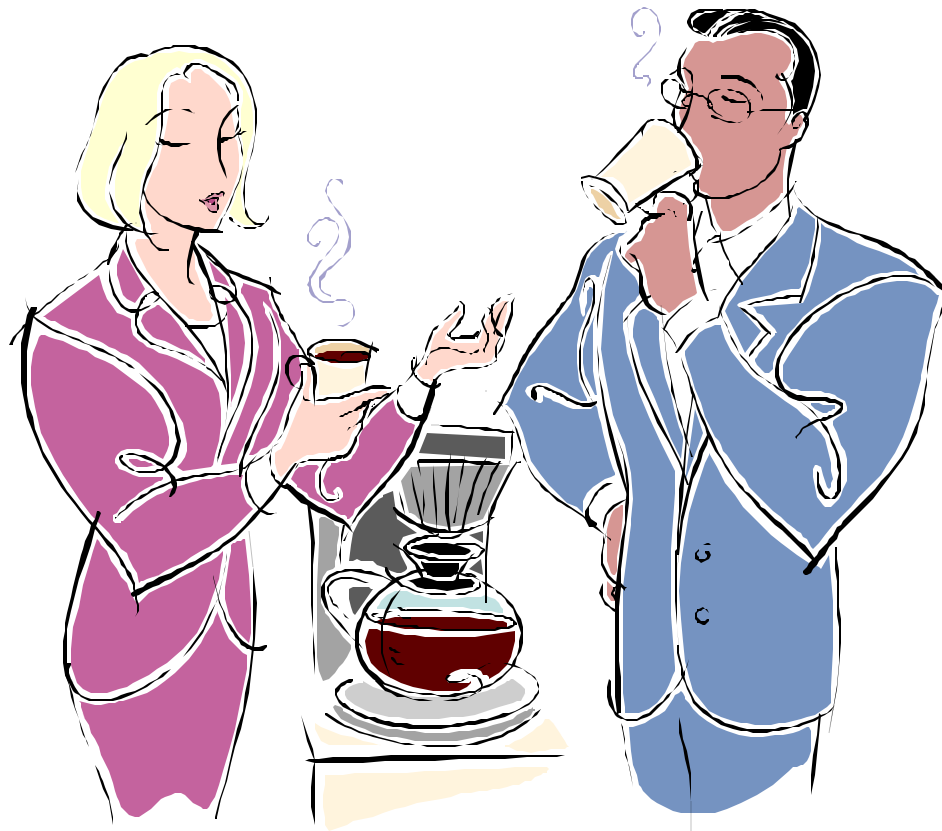
- **DISCUSSION.....**

# Policy Strategies – Controlling the Flow: State's Assumptions



- **Is the state's policy strategy to control the flow of alcohol through licensing still appropriate / relevant?**
  - State's working definition/interpretation: *To monitor and control the availability of alcohol, to enable effective tax collection and to enforce statutes and rules.*
  - The LCB states that controlling the flow of alcohol through licensing supports the goal of reducing/eliminating the misuse of alcohol by:
    - Knowing who is selling the alcohol and ensures accountability (registration).
    - Preventing irresponsible, undesirable participants (qualifying license applicants).
    - Limiting availability of the product by licensing certain businesses to sell alcohol (and excluding others, e.g., not tattoo parlors) and limiting the type of alcohol that can be sold (beer/wine or spirits) by businesses with specific license types.
    - Core assumption: public safety is jeopardized when alcohol is sold outside the licensed flow of commerce (compared to the sale of fake Gucci purses which has no public safety risks).
  - According to the LCB, controlling the flow of alcohol through licensing supports efficient collection of taxes by:
    - Collecting the tax from an identifiable group of participants located in-state and the smallest group compared to other licensees (in the producer and retailer tiers). OR
    - Identifying participants (licensees – in-state and out-of-state) from whom taxes are due.
- **DISCUSSION.....**

# BREAK



# Policy Goals & Strategies Wrap-up



## 1. Prevent misuse of alcohol

- a) General principle okay?

## 2. Collect taxes

- a) General principle okay?

## 3. Ensure orderly and responsible market

- a) Prohibit unfair practices?
- b) Monitor and control distribution?
- c) More?

## 4. Separate the three tiers

- a) Strict separation? Moderate separation? Minimal separation?

## 5. Level the playing field

- a) No controls related to competition (let FTC rules apply)?
- b) Minimal controls – only when can tie to misuse?
- c) No change to strategy concept?

## 6. Control the flow of alcohol through licensing

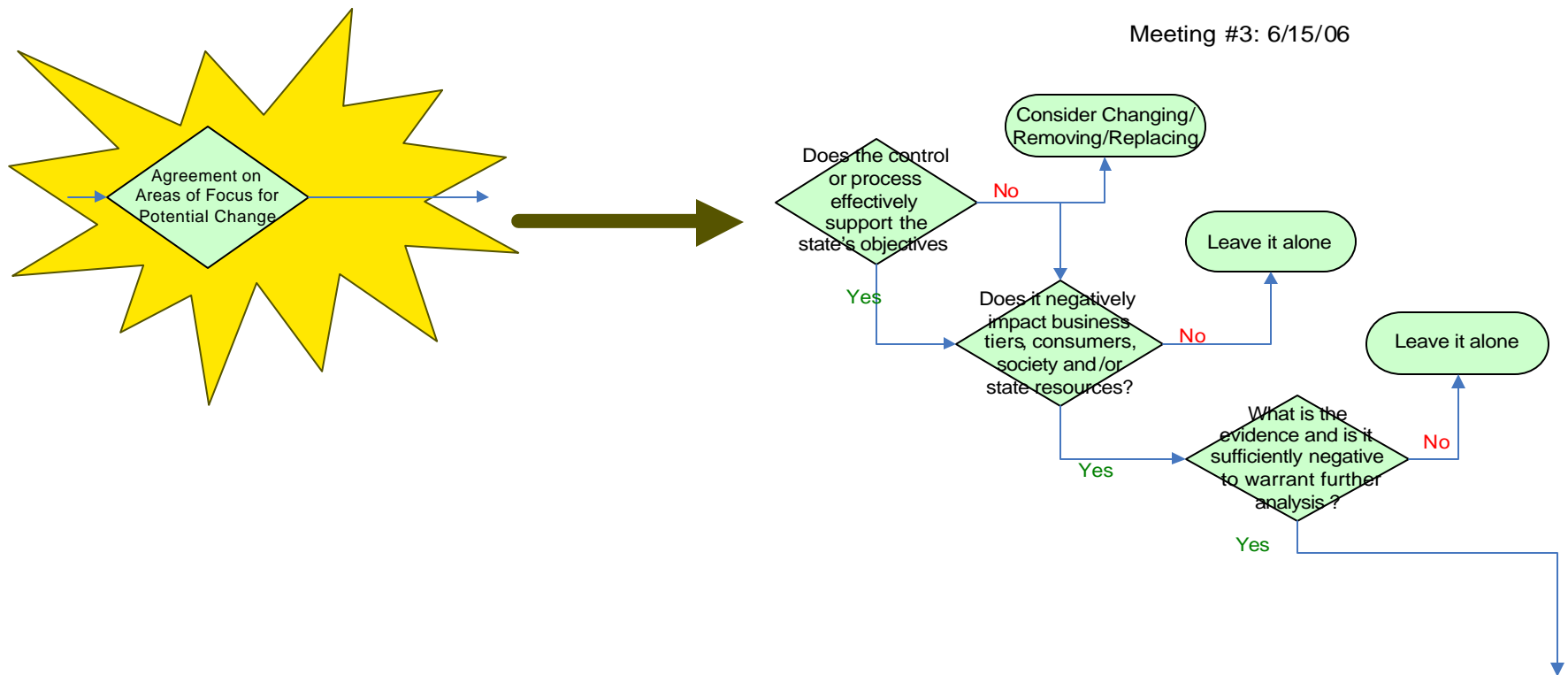
- a) General principle okay?



# Selecting and Prioritizing



- Selection of potential change candidates and prioritizing them will set the stage for discussing alternatives





# Results of Selections



- **Unanimous “no” will effectively take the item off the list for consideration of change.**
- **Number of “Yes” votes per item, combined with the priority indicated, will be used to “rank” the list of *potential* change candidates.**
  - Something lower on the list does not necessarily mean it will not be addressed. The list will help us focus attention where the Task Force is most interested in affecting potential change. The list will not be static, but may change as the discussions continue and decisions are made.
- **The next step will be discussion of possible alternatives to the current statute/rule/practice/circumstance.**
  - It is possible that as the Task Force moves forward with its consideration of issues and change alternatives are identified, the group may decide one or more items should be removed as candidates for change.

# Sample Ballot



## Item: **Advertising Regulations**

Reference for current law/rule/practice: RCW xx.xxx.xx., WAC xx.x.x..

State's intended purpose for the current law/rule/practice (as identified by the LCB): To enable the LCB to enforce pricing regulations and to.....

1. Does the **current** practice of this item **effectively support its intended purpose**?

☐ Yes

☐ No

2. Does it **negatively impact**:

a. **Your business?** ☐ Yes

☐ No

☐ N/A

If yes, *briefly* explain how? [REDACTED]

b. **Consumers?**

☐ Yes

☐ No

\*If so, *briefly* explain how? [REDACTED]

c. **Society?** ☐ Yes

☐ No

\*If so, *briefly* explain how? [REDACTED]

d. **State resources?** ☐ Yes

☐ No

\*If so, *briefly* explain how? [REDACTED]

3. Should this item be **considered for change**?

☐ Yes

☐ No

If Yes, what is the **priority**?

☐ High

☐ Medium

☐ Low

# Voting Instructions



- Complete on line and “save as” with your initials.
- Email to Sterling Associates (jills@sterling-llp.com and kimr@sterling-llp.com) by **Friday May 26**.
  - If you prefer to use hard copy, print out, fill out, and mail by **Thursday May 25**. Please also send an email to let us know you have mailed it.

Jill Satran  
Sterling Associates, LLP  
4820 Yelm Hwy SE  
Suite B – PMB 148  
Lacey, WA 985003

# Wrap-up



- **What we accomplished today**
- **Next meeting's purpose and "homework" assignments**
  - Date/Time: Thursday June 15, 10a – 3p. **LCB Board Room – 1<sup>st</sup> floor.**
  - Purpose: to present results of votes on change candidates and begin discussing alternatives.
  - Homework:
    - Complete and email (or send) ballots as instructed when sent (plan to receive them on Monday 5/22 with a due date of Friday 5/26)
    - Review information you receive, including summary of today's meeting and next meeting materials.
    - Send general questions or comments to Sterling Associates by Friday 6/9 if it needs to be included for 6/15 meeting. (Public too.)
- **Questions?**

# Adjourn



- Thank you!
- See you in four weeks.



## Appendix - Info



- **Written comments from stakeholders and/or Task Force meeting audience are welcome (contact information must be included) and can be submitted via:**
  - LCB web site: [WWW.LIQ.WA.GOV](http://WWW.LIQ.WA.GOV) (link to Task Force)
  - Email to Sterling Associates (please address to both)
    - Jill Satran – [jills@sterling-llp.com](mailto:jills@sterling-llp.com)
    - Kim Rau – [kimr@sterling-llp.com](mailto:kimr@sterling-llp.com)
- **Written comments received by Fridays before a Task Force meeting will be included in a consolidated document to the Task Force members. Written comments will be summarized and presented at each Task Force meeting. (They will not necessarily be individually addressed via email or by the Task Force.)**
  - Written comments submitted to the Task Force will be also be available for public viewing on the LCB's web site.